IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 8447 of 2004

Between:

P. Rayalingu, S/o. Narasiah,
R/o.H.No.101-34, Kasipet Mandal, Adilabad District.

..... PETITIONER

AND

1 The Government of A.P., Rep. by The Deputy Commissioner of Prohibition and Excise, Karimnagar District.
2 The State of A.P., through Sub-Inspector of Police, Ramkrishnapur, Adilabad District.
3 The Government of A.P., Rep. Commissioner of Prohibition and Excise,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ, Order or direction more particularly in the nature of Writ of Mandamus or any other appropriate Writ, setting aside the order passed by the 3rd respondent dated 21-1-2004 in Appeal No.CR.No.20407/2003/CPE/D4 in the interest of Justice,

Counsel for the Petitioner:MR.THAKUR SINGH

Counsel for the Respondent No.: GP FOR PROHIBITION & EXCISE

The Court made the following :

O R D E R:

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the order dated 21-01-2004 in Appeal No.Cr.No.20407/2003/CPE/D4 passed by the 3rd respondent as illegal and arbitrary.

Admittedly, the petitioner herein is the owner of the auto bearing No. AP 10 ACTR 8796. It is stated that on 11-07-2003, while the 2nd respondent-S.I. of Police, Ramakrishnapuram, was on patrolling, found one person by name Kandi Gurumurthy near the said auto having one plastic can containing 5 liters of I.D. liquor. The 2nd respondent-S.I. of Police, Ramakrishnapuram, in turn seized the said can along with the auto from the possession of the said Guru Murthy under the cover of Panchanama and registered a case in FIR No.114 of 2003 of Ramakrishnapuram P.S. for the offence punishable under Section 34(a) of A.P.Excise Act (for short 'the Act') against him. The accused-Kandi Guru Murthy was alone remanded. The petitioner filed an application before the 1st respondent- Dy. Commissioner of Prohibition and Excise, Karimnagar, for interim custody of the said auto till the disposal of the case. The 1st respondent-Dy.Commissioner of Prohibition and Excise, by an order dated 29-09-2003, in exercise of his powers vested under the Act ordered confiscation of the said auto.

It is the case of the petitioner before the 1st respondent-Dy. Commissioner of Prohibition and Excise that he has given the said auto to the accused-Kandi Gurumurthy s/o Venkati on lease of Rs.200/- per day for the purpose of running the Auto to transport the passengers and he has no knowledge of the offence committed by the accused and therefore he requested release of the vehicle for interim custody till the disposal of the case. The 1st respondent basing on the facts of the criminal case, without considering the point whether the petitioner had any knowledge or information about committing of the offence by the said accused opined that the said vehicle is liable to be confiscated under Section 45 of the Act. Aggrieved by the said order, the petitioner, preferred an appeal before the 3rd respondent Commissioner of Prohibition and Excise, Hyderabad, vide Appeal No. CR.No. 20407/2003/CPE/D4 wherein the appellate authority also by order dated 21-02-2004 dismissed the said appeal on the ground that the petitioner would have taken care and ensure that his property is not put to any illegal use and in view of the fact that as the illicit liquor was transported in the said vehicle, the vehicle is liable to be confiscated and

confiscated the said auto.

As regards confiscation of such vehicles, a Division bench of this Court in the case of **G.Nasar Reddy V. Commissioner of Prohibition and Excise, A.P. and others()** held that if the owner of the vehicle has no knowledge about the contraband nature of the goods transported in the vehicle by the driver and the owner of the vehicle was not made a party to the criminal proceedings, such vehicles cannot be confiscated.

Having regard to the facts and circumstances in the above decision, I am of the view that the principles laid down in the said decision is squarely applies to the facts of the case on hand.

In the instant case, as already stated, the police officials detected the accused, who is the driver of the crime auto, while he was illegally transporting five liters of ID liquor can and seized the same along with the crime auto. It is further to be noted that the petitioner, who is said to have been the owner of the vehicle was not made a party to the criminal proceedings. Therefore, by any stretch of imagination, it cannot be said that the petitioner had knowledge about the transportation of the said ID liquor illegally by the accused.

Having regard to the facts and circumstances of the case, and in the light of the principles laid down in the above decision, I am of the view that the vehicle of the petitioner is not liable to be confiscated and therefore, the impugned order is liable to be set aside.

Accordingly, the writ petition is allowed by setting aside the impugned order directing the respondents to release the vehicle in favour of the petitioner. In case, if the petitioner has already furnished any security either for interim release or final release, the same shall stand discharged and the vehicle shall be released unconditionally. No costs.

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09-03-2005.

Note: CC in one week

B/o MJL/*

To,

1 The Government of A.P., Rep. by The Deputy Commissioner of Prohibition and Excise, Karimnagar District.
2 The State of A.P., through Sub-Inspector of Police, Ramkrishnapur, Adilabad District.
3 The Government of A.P., Rep. Commissioner of Prohibition and Excise,

Hyderabad.

4. 2 CCs to GP for Proh & Excise, High Court buildings, Hyderabad.

2 CD copies.